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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

Application No.	:	09/319,243	Confirmation No.:	2663
Applicant	:	Ping Liong Tjoa		
Filed	:	June 7, 1999		
Title	:	Training Apparatus		
TC/A.U.	:	3764		
Examiner	:	L. Hamilton		
Docket No.	:	TJOA3001/FJD		
Customer No.	:	23364		

REPLY BRIEF ON APPEAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA. 22313-1450

Sir:

INTRODUCTORY COMMENTS

A reply to the Examiner's Answer of January 30 2007 is deemed necessary and is being submitted pursuant to the provisions of 37 CFR 41.41(a).

REPLY

Several points should be considered as a result of the Examiner's Answer issued on January 30, 2007.

(1)

On page 3 of the Examiner's Answer the examiner states:

Bosko discloses a training apparatus for massing [sic] the palms and promoting body bearing motion (may be in any shape or size for all practical reasons on the device [sic] of physicians or trainers (col. 1, lines 40 -45);

and

each element has a spherical form, the diameter of which is adapted to the palm of the hand of the training person (col 1, lines 35 - 50).

Both of these statements reflect a state of advocacy on the part of the examiner which is entirely out of character for the examination procedure conducted in the USPTO. Nowhere in the column and lines noted by the examiner , or in any part of Bosko, does the term "palm" appear. Nowhere in the column and lines noted by the examiner, or in any part of Bosko, is there a disclosure that the diameter of the end elements are "adapted to the palm of the hand." What, then, is the basis for such an assertion on the part of the examiner? It is respectfully submitted that there is no basis.

In column 1, lines 45 and 46 of Bosko, the internal diameter of the containers

(end elements) is disclosed as "approximately 7.6 inches." Such a dimension is certainly not adapted to be held by an individuals palms for carrying out an exercise routine. And this is clearly not the teaching of Bosko when he further states in column 5, lines 43 - 44, that each container may hold "10 gallons of liquid." If the person using the device is an elderly person, for example, lifting 20 gallons of a liquid (10 in each container) using only the palms of their hand, and lifting the device over their head and perhaps behind their back is emphatically not what Bosko had in mind.

The examiner is undoubtedly stretching the application of Bosko beyond all reasonably based possibilities. One should not be misled by the fact that Bosko shows two containers separated by a bar. This is not the sum total of the present invention. One should take a more careful look at the declarations filed with this application.

(2)

Two declarations under 37 CFR 1.132 were submitted in this case. The Board in its remand to the examiner, instructed the examiner to "...fully treat the submission on the record, explaining why the submission is or is not sufficient to overcome the rejection(s)," (page 5 of the Board's remand (Paper No.33). It is respectfully submitted that this has not been done. That is, the examiner's statement on page 7 of the Examiner's Answer that "...the Examiner has given consideration to the declarations.....the Examiner did not find that the declarations helped to place the application in condition for allowance." Is not the treatment intended by the Board.

Reference is made to MPEP 716, which provides guidance on treating declarations under 37 CFR 1.132. Section 716 instructs the examiner, if he/she does not believe that the declaration overcomes the rejection(s) to state why. See page 700-286 of the MPEP. The examiner has not followed the outlined procedure. The outcome should be acceptance of the declarations and withdrawal of the rejections.

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The Board is urged to consider the above comments in reaching its decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Felix J. D'Ambrosio', with a long horizontal stroke extending to the right.

Felix J. D'Ambrosio  
Reg. No. 25,721

March 21, 2007

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